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Sixty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1755th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1755/Add.1.

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GE.99-42877 (E)

The meeting was called to order at 3.10 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued) (CCPR/C/GUI/1)

1. The CHAIRPERSON invited the Committee to continue its consideration of the draft consolidated guidelines for State reports under the Covenant (CCPR/C/GUI/1).

2. Lord COLVILLE, speaking as the author of the document and referring to section 4 (1) (f), suggested that subparagraph (f) should be shortened to read: "Paragraph 4 of the core document should be amplified by describing the process of preparation of the report and the extent of consultation which has taken place." He further suggested the insertion, after section 4 (1) (a), of a new subparagraph reading: "The Committee's general comments should be taken into account."

3. Those suggestions were approved.

4. Mr. AMOR, referring to section 4 (2), remarked that the guideline concerning reservations or declarations applied not only to initial reports but also to subsequent periodic reports. In the interests of logic, it might be preferable to divide the whole document into three sections, the first containing guidelines of that kind, the second containing those which applied exclusively to initial reports and the third containing those which applied exclusively to periodic reports.

5. Mr. ZAKHIA supported that suggestion.

6. Lord COLVILLE considered that it would be useful to spell out everything the Committee wanted to be included in the initial reports. The same guideline could, if necessary, be repeated with respect to periodic reports.

7. Ms. EVATT and Mr. WIERUSZEWSKI associated themselves with that view.

8. The CHAIRPERSON noted a general preference in favour of leaving the layout of the draft unchanged.

9. Mr. LALLAH suggested that the guideline on "other restrictions or limitations" (section 4 (3)) should be moved to become subparagraph (g) of section 4 (1). Wherever permissible restrictions or limitations were imposed in relation to any article of the Covenant, the State party should, in its initial report, explain the reasons for them and the manner in which they were applied. In addition, a separate guideline on derogations under article 4 of the Covenant, applicable to both initial and periodic reports, should be included somewhere in the draft.

10. Lord COLVILLE endorsed both those suggestions and expressed his readiness to draft a paragraph on derogations, to be inserted possibly after section 8 (3).

11. Mr. POCAR, remarking that the "factors or difficulties" referred to in section 4 (4) formed a different subject from the "discrimination" mentioned

later in the same paragraph, suggested that the paragraph should be divided into two separate parts. He also drew attention to the need for more consistent use of the words "should", "shall" and "must" throughout the draft.

12. Mr. BHAGWATI supported the suggestion that section 4 (4) should be divided.

13. Lord COLVILLE endorsed that suggestion, adding that the second part of the paragraph (appearing at the top of page 5) would seem to relate both to "factors or difficulties" and to "reasons for any discrimination". As to Mr. Lallah's second point, he would prefer to attend to it once the Committee had completed its consideration of the draft as a whole.

14. In response to a suggestion by Mr. Zakhia, he said that the new separate subparagraph relating to "discrimination" could also refer to any other difficulties the State party might have in implementing the Covenant.

15. Mr. BHAGWATI, referring to section 4 (5), suggested that the words "relevant to these Guidelines" in the first sentence should be replaced by "relevant to the Covenant rights".

16. Mr. KLEIN, supported by Ms. EVATT, thought that it would be more correct to say "relevant to the report" or "relevant to the issues discussed in the report".

17. Mr. LALLAH considered that the paragraph overlooked an important feature, namely, how the Covenant was implemented in practice. In particular, the inclusion of references to specific court decisions was useful and should be encouraged.

18. Ms. EVATT agreed with that suggestion and, in her turn, suggested the addition of the words "or translated" after the words "These will not be copied further" at the beginning of the second sentence of section 4 (5).

19. Lord COLVILLE endorsed those suggestions.

20. Mr. KRETZMER suggested the addition of the words "where possible translated into one of the working languages of the United Nations" at the end of the first sentence.

21. Lord COLVILLE feared that the costs of translation might deter States parties from producing the annexes which the Committee was asking for.

22. Mr. YALDEN agreed that such a recommendation might prove counter-productive.

23. Lord COLVILLE, referring to Mr. Lallah's remark concerning the need for information on how the Covenant was being implemented in practice, suggested that section 4 (1) (b) might be reworded to read: "The report should deal specifically with the actual situation, the practice and the legal norms as they affect every article in parts I, II and III of the Covenant."

24. Turning to section 5 of the draft, he remarked that, while it was of course desirable that delegations should include representatives of all the necessary disciplines, he was not sure how to convey that idea to States parties without appearing too prescriptive.

25. Ms. CHANET felt that as it stood section 5 was a little too general. She did not believe that States parties would take it amiss if the Committee indicated more clearly the type of delegation that would be best able to answer its questions. She offered to draft an appropriate text.

26. Mr. YALDEN said he would be reluctant to issue instructions to States parties regarding the composition of delegations. They already complained of the burden imposed by reporting obligations, and less well-off countries could not afford to send large delegations. He was in favour of leaving section 5 as it stood.

27. Ms. EVATT agreed with Mr. Yalden. However, she proposed amending the first part of the second sentence to read: "The delegation should therefore be competent to respond."

28. Mr. KLEIN proposed inserting the words "written and oral" before "questions and comments" in the second sentence.

29. Mr. KRETZMER proposed inserting the phrase "have a thorough knowledge of the human rights situation in the State party and" after "therefore" in the second sentence.

30. Mr. AMOR said that, while States were free to decide on the composition of their delegations, the Committee should draw attention, politely but firmly, to certain criteria that needed to be met. The provision regarding the composition of delegations was applicable to both initial and periodic reports.

31. Lord COLVILLE said that a decision by the Committee to combine some of the material relating to initial and periodic reports would call for a major revision and retranslation of the draft guidelines. It might not be possible in those circumstances to include them in the next annual report. However, he suggested that Mr. Amor should present him with a list of guidelines applicable to all reports.

32. He strongly supported Mr. Kretzmer's proposed amendment.

33. Mr. POCAR proposed that the Committee should first agree on the substance of the guidelines and then look into the question of repetition.

34. The CHAIRPERSON said she took it that the Committee endorsed Mr. Pocar's proposal and wished to adopt the following version of the second sentence of section 5: "The delegation should therefore have a thorough knowledge of the human rights situation in the State party and be competent to respond to the Committee's written and oral questions and comments concerning the whole range of Covenant rights."

35. It was so agreed.

36. Mr. KRETZMER, supported by Mr. YALDEN, referring to the third sentence of section 6 (1), said that the Committee's interaction with delegations could not really be described as a constructive dialogue. He suggested that the sentence should be deleted.

37. Mr. KLEIN proposed that in that sentence the word "takes" should be replaced by "should take", and the words "a dialogue" should be deleted. He was in favour of retaining the reference to a "constructive discussion".

38. Mr. AMOR wondered whether it was appropriate to include the reference in the second sentence to non-governmental organizations (NGOs), some of which were merely governmental organizations in disguise.

39. Ms. EVATT said that the Committee's annual report, especially in recent years, had made it clear that both governmental and non-governmental institutions were consulted in connection with country reports. She would be reluctant to omit the reference to NGOs from the guidelines. Their work was of great value to the Committee, which could decide for itself on the reliability or objectivity of individual bodies.

40. She agreed with Mr. Klein's comments on the last sentence. While the results of the Committee's discussion with delegations were not always constructive, the intention was indeed constructive: to promote human rights in States parties.

41. Mr. KRETZMER supported Ms. Evatt's comment on NGOs. The draft guidelines should legitimize the practice of using NGO material.

42. He also agreed that the Committee's intention was to make constructive suggestions to delegations regarding improvements in the human rights situation in States parties. He could support Mr. Klein's proposed amendments to the last sentence.

43. Mr. ZAKHIA said there was a tendency throughout the United Nations system to attach greater importance to civil society, particularly NGOs. The Committee could not be criticized for consulting NGOs because it was quite capable of sifting through the information they provided and discarding unreliable material.

44. Mr. SOLARI YRIGOYEN said he was also in favour of retaining the reference to NGOs. There were plenty of criteria that could be used to establish whether information was objective or slanted. NGOs were making an extremely effective contribution to the work of the United Nations system, particularly in the area of human rights.

45. Mr. LALLAH said that NGOs served as the Committee's eyes and ears and should certainly be mentioned in the guidelines. He had no problem with the reference to a constructive dialogue.

46. Mr. AMOR agreed that NGOs in general had been doing an excellent job. But he had serious doubts about some NGOs that had recently been granted consultative status with the Economic and Social Council.

47. Mr. YALDEN said he was in favour of retaining the reference to NGOs. Since joining the Committee, he had never encountered NGOs which acted as government agents; all without exception had been critical of the Governments of States parties. He supported Mr. Klein's proposed amendments to the last sentence.

48. Mr. BHAGWATI said he was strongly in favour of retaining the reference to NGOs and supported Mr. Klein's proposed amendments.

49. Mr. POCAR said he also wished to retain the reference to NGOs. He agreed with Mr. Klein's proposed amendments but thought that Ms. Evatt's point regarding the Committee's intention to improve the human rignts situation in States parties should also be included. The word "constructive" referred to the goal of the discussion and not to the dialogue itself.

50. Lord COLVILLE proposed the following wording for the last sentence: "The Committee intends this consideration to take the form of a constructive discussion with the delegation aiming to improve the situation pertaining to the Covenant rights in the State."

51. The CHAIRPERSON said she took it that the Committee wished to keep the reference to NGOs and adopt the wording of the last sentence proposed by Lord Colville.

52. It was so agreed.

53. Mr. AMOR, referring to section 6 (2), suggested adding the word "basic" before "agenda" in the first sentence.

54. It was so agreed.

55. Lord COLVILLE proposed that the sentence in square brackets should be deleted.

56. Mr. KLEIN said that he was not opposed to the idea of having answers to the list of issues provided in advance. It might enliven the discussion.

57. The CHAIRPERSON observed that it was impossible to have written replies translated in time for the session. The whole question of converting the oral procedure into a written procedure needed to be discussed in detail in the context of possible changes in working methods. No decision could be taken for the time being.

58. Lord COLVILLE considered that there would be a temptation for States parties to make their written replies extremely long, reading them out at the meeting and leaving no time for additional oral questions.

59. The CHAIRPERSON said she took it that the Committee wished to delete the third sentence of section 6 (2).

60. It was so agreed.

61. Mr. KRETZMER, referring to section 6 (3), stressed the need for consistency with earlier amendments regarding the use of the terms "discussion" and "dialogue". The last sentence concerned the very important issue of follow-up by States parties of the Committee's concluding observations. He suggested that the matter should be dealt with under a separate section, possibly at the end of the guidelines.

62. Ms. EVATT agreed that the last sentence was out of place in the paragraph. Perhaps a more specific reference to the need for follow-up on recommendations could be incorporated under section 8 (3), which emphasized the importance of previous concluding observations as a starting-point for States parties' reports. She further suggested that the second sentence should be rephrased to make it clear that it was the States parties which were expected to disseminate the concluding observations widely, in all suitable languages, with a view to public discussion.

63. Ms. CHANET questioned the need for the last sentence, stressing the importance of consistency between the draft guidelines and the document on consideration procedures adopted by the Committee's Task Force on Working Methods (A/53/40, annex VIII).

64. Mr. POCAR endorsed the comments by Ms. Evatt and Ms. Chanet. He queried the appropriateness of using the verb "publish" in the first and second sentences.

65. Lord COLVILLE said that in the first sentence "publish" should be replaced by "issue" and "dialogue" by "discussion". He further suggested that the second sentence might be amended to read: "It is expected that the States parties will widely disseminate these, in all suitable languages, with a view to public discussion." The last sentence should be deleted and the reference along the lines suggested by Ms. Evatt should be included under section 8.

66. The CHAIRPERSON said she took it that the Committee wished to redraft the paragraph as suggested by Lord Colville.

67. It was so agreed.

68. Mr. AMOR, referring to section 6 (4), said that the introductory phrase "It is the Committee's experience that" added little to the text and should therefore be deleted.

69. Mr. KRETZMER expressed concern about the proposal contained in subparagraph (a). He doubted whether it would be feasible, particularly during the last week of session, for additional information submitted by States parties to be taken into account in the Committee's concluding observations.

70. Mr. LALLAH wondered whether the subparagraph was really necessary at all, for experience showed that it usually took several months to a year for States parties to provide additional information following the consideration of their report.

71. Mr. YALDEN agreed that it was unrealistic to expect States parties to furnish within such a short deadline supplementary information to be taken into account in the concluding observations. He therefore suggested that the subparagraph should be deleted.

72. Mr. ZAKHIA wondered whether the problem might be resolved by requesting States parties to provide such information within a more reasonable time frame.

73. Lord COLVILLE said that his basic idea when drafting paragraph (4) had been to draw attention to the importance of additional information from States parties following consideration of their reports, not only for the purposes of concluding observations but also for inclusion in subsequent periodic reports, in the Committee's annual report and in the secretariat files. Although that point would be raised by the Committee during its discussion with States parties, it would be useful for it to appear in writing somewhere. He acknowledged that subparagraph 4 (a) was somewhat unrealistic and that the whole paragraph could be considerably shortened. He would endeavour to redraft it in the light of members' comments.

74. The CHAIRPERSON said she took it that the Committee endorsed that course of action.

75. It was so agreed.

76. Ms. EVATT questioned the need for section 7 (3).

77. Lord COLVILLE suggested that paragraph (3), which had been lifted from previous guidelines and did not in fact appear to be necessary, should be deleted.

78. The CHAIRPERSON said she took it that the Committee wished to delete paragraph (3) and to retain paragraphs (1) and (2) as they stood.

79. It was so agreed.

80. Mr. SCHEININ took issue with the phrase "it is not usually necessary to report on an article-by-article basis" in section 8 (1). In his view, it was extremely difficult for the Committee to consider reports that were not structured along those lines. Perhaps the second half of the paragraph could be reworded to say that although reports should be compiled on an article-by-article basis, the information submitted under the various provisions of the Covenant should focus on new developments.

81. Lord COLVILLE said that there were two schools of thought on States parties' reports: some members wanted information to be provided on every article of the Covenant, while others preferred a report based on the previous concluding observations which highlighted new developments. He had been under the impression when drafting the paragraph that the majority of members were in favour of the latter option. That issue must be clarified without further delay. He explained that the first half of the paragraph had been added to

meet the particular needs of many States emerging from the former Communist bloc, where there was a whole new approach to human rights. He considered that such a reference was necessary.

82. Mr. BHAGWATI concurred with Mr. Scheinin: reports structured on an article-by-article basis helped to focus discussion and to gauge exactly what changes had taken place since consideration of the previous report. However, reports must include information on new developments, particularly in response to the recommendations made in the Committee's concluding observations.

83. Mr. POCAR said that the two approaches outlined by Lord Colville were not necessarily contradictory: the information provided by States parties in relation to each article of the Covenant should cover new developments and take into account the Committee's concluding observations.

84. Mr. LALLAH agreed on the need for reports structured according to the articles of the Covenant, fearing that some States parties might provide a very scant report on the basis of concluding observations only. One solution would be to point out to States parties that it was not necessary to repeat material provided in earlier reports. In the past many States parties had found neat ways of dealing with articles where there were no new developments to report, thus avoiding a cumbersome text.

85. Ms. EVATT said that while she deplored the repetition of information by some States parties, it was nonetheless desirable for material to be set out on an article-by-article basis. She would stress, however, that information on new developments and in response to the Committee's concluding observations should be included in the report under the relevant article heading. There had been a tendency, particularly with regard to the latter, to deal with it under a separate part of the report. Lastly, she wondered if paragraph (1) might be more appropriately placed after paragraph (5).

86. Mr. YALDEN said it was important for the reports of States parties to follow the sequence of articles in the Covenant while focusing on the Committee's concluding observations and new developments. He suggested that paragraph (1) might be reworded along those lines.

87. Ms. CHANET drew attention to annex VIII of the most recent report of the Committee (A/53/40), which reproduced the document on procedures for the consideration of initial and periodic reports adopted on 9 April 1998 by the Task Force on Working Methods. The fourth sentence of paragraph (8) of that document would seem to meet members' concerns. It read: "Subsequent reports should, on an article-by-article basis, provide information on measures taken to address the Committee's concerns and recommendations contained in the concluding observations, as well as on any new development, if any, in law and in practice."

88. Mr. KLEIN said that, on average, there was a lapse of five years between the consideration of one periodic report and another, so it was likely that States parties would have ample information to convey on new developments in legislation and jurisprudence relating to most of the articles of the Covenant. It was important to impress on States parties the difference between initial and periodic reports; the former should provide more

information on the general human rights situation in the country. He suggested that section 8 should begin with paragraph (3), which appeared to give a better idea of exactly what the Committee was looking for in periodic reports.

89. Lord COLVILLE said it was clear from the discussion that the basic structure of reports should continue to follow the articles of the Covenant, but only to the extent required to respond to concluding observations and new developments. It was still worthwhile mentioning the situation of certain States parties where a major reappraisal of their approach to the implementation of the Covenant had occurred. He recognized, however, that was not an issue of prime importance and need not appear in the first paragraph of the section. He would redraft the paragraph, taking into account all comments made, as well as the sentence quoted by Ms. Chanet from the Task Force document. In the light of the discussion he would need to recast and considerably shorten paragraphs (2) to (7).

90. The CHAIRPERSON said she took it that the Committee endorsed that course of action.

91. It was so agreed.

92. Mr. KRETZMER said that section 8 (8) as currently worded was somewhat misleading since it implied that violations were found with respect to every communication examined by the Committee and resulted in a recommendation for some remedy by the State party.

93. Mr. SCHEININ recalled that there were cases of so-called qualified non-violation where the Committee could merely express its concern about a State party's legislation even when no individual violation was found. For the sake of accuracy and to meet Mr. Kretzmer's concern, therefore, he suggested that the latter part of the paragraph should be amended to read: "include details of the steps taken as a consequence of the views, in particular to afford an appropriate remedy in cases where a violation was found, and to ensure that no such violation again occurs".

94. Lord COLVILLE endorsed that amendment.

95. The CHAIRPERSON said she took it that the Committee endorsed the amendment proposed by Mr. Scheinin.

96. It was so agreed.

97. Following queries by Mr. KRETZMER and Mr. POCAR, Lord COLVILLE suggested that paragraph (9) should be deleted, particularly since a stock phrase requesting State parties to disseminate the Committee's concluding observations and engage in a process of consultation and preparation for subsequent periodic reports was normally included at the end of all concluding observations.

98. It was so agreed.

99. Lord COLVILLE said his intention in including section 8 (10) had been to emphasize the Committee's desire to cooperate with States parties.

100. Mr. KLEIN agreed that the Committee should encourage States parties to engage in a constructive discussion with it on any specific problems they were encountering, so that it could suggest ways of promoting respect for human rights in a particular situation.

101. Ms. CHANET said the suggestion being made seemed to be that the Committee should offer some kind of consultative opinion, which in her view would be dangerous. In the past, requests had been made for such opinions, notably in regard to reservations, to which the Committee had not responded. The general comments should be sufficient; States parties should not also seek the Committee's views on how those comments were to be followed up in practice. Not only did the Committee have no procedure for issuing consultative opinions, but it could also find itself in an awkward situation if it received a communication relating to a specific point on which it had previously issued such an opinion.

102. Mr. BHAGWATI agreed. If the Committee was to take on a consultative role in respect of compliance by one State party with a particular article of the Covenant, it could be placed in an embarrassing position when discussing the report of another State party.

103. Mr. LALLAH said that he would not rule out the approach suggested if, in the course of discussion of its report, a State party raised a question in relation to a particular event. However, he did not think it would be wise to incorporate that approach in the guidelines. He proposed that paragraph (10) should be deleted.

104. It was so agreed.

105. Mr. AMOR asked for clarification as to what decision had been taken regarding the final format of the draft guidelines.

106. Lord COLVILLE said there was no need for the Committee to take a decision at the present stage. He would prepare a new draft presenting a series of options, from which the Committee could choose at its next session.

The public part of the meeting rose at 5.25 p.m.